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FILED
DISTRICT COURT OF GUAM

AUG - 7 2007
JEANNE G. QUINATA
CLERK OF COURT

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

MARESA L. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL CASE NO. 07-00003

**ANSWER OF THE UNITED STATES
TO THE FIRST AMENDED
COMPLAINT**

THE UNITED STATES, Defendant herein, submits its answer to the First Amended Complaint as follows:

1. ADMITS.
2. ADMITS.
3. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph III and therefore DENIES same.
4. ADMITS that Captain Kirin L. Madden is a member of the United States Air Force and acting within the scope of her office and employment.

1 5. ADMITS.

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3 6. Defendant is without sufficient knowledge to admit or deny the allegations in
4 paragraph VI.

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6 7. Defendant is without sufficient knowledge to admit or deny the allegations in
7 paragraph VII (erroneously captioned as paragraph VIII in the First Amended Complaint).

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9 8. Paragraph VIII contains conclusions of law to which no answer if required. To the
10 extent an answer is deemed necessary, defendant Denies the allegations contained in this
11 paragraph.

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13 9. Paragraph IX contains conclusions of law to which no answer if required. To the
14 extent an answer is deemed necessary, defendant DENIES the allegations contained in this
15 paragraph.

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17 FIRST AFFIRMATIVE DEFENSE

18 The United States DENIES any of its agents or employees were negligent and/or
19 breached any standard of care due the Plaintiff and/or engaged in any conduct which was the
20 proximate cause of the injuries, damages and losses allegedly incurred by Plaintiff.

21
22 SECOND AFFIRMATIVE DEFENSE

23 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
24 prejudgment interest against the United States of America.

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1 THIRD AFFIRMATIVE DEFENSE

2 Under 28 U.S.C. § 2412(D)(1)(a), Plaintiff cannot recover attorney's fees from the United
3 States of America.

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5 FOURTH AFFIRMATIVE DEFENSE

6 Plaintiffs claim is diminished or completely barred by Guam law regarding
7 comparative/contributory negligence.

8
9 FIFTH AFFIRMATIVE DEFENSE

10 Plaintiff voluntarily assumed the risk of injury.

11
12 SIXTH AFFIRMATIVE DEFENSE

13 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

14
15 SEVENTH AFFIRMATIVE DEFENSE

16 All future damages, if any, must be reduced to present value.

17
18 EIGHTH AFFIRMATIVE DEFENSE

19 The United States has not waived its sovereignty under the Federal Tort
20 Claims Act (FTCA), 28 U.S.C. § 1346(b) to include a jury trial.

21
22 NINTH AFFIRMATIVE DEFENSE

23 Defendant reserves the right to amend its Answer with additional defenses of which it
24 may become aware as discovery progresses and to raise any other matter constituting an
25 avoidance or affirmative defense.

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1 WHEREFORE, having fully answered all counts of the Complaint, Defendant prays that
2 Plaintiff takes nothing by way of her Complaint against it, that the same be dismissed, and that
3 judgment be awarded in favor of Defendant, together with costs and such other and further relief
4 as the Court deems appropriate in this case.

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6 RESPECTFULLY SUBMITTED this 7th day of August 2007.

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8 LEONARDO M. RAPADAS
9 United States Attorney
10 Districts of Guam and NMI

11 BY:

12 MIKEL W. SCHWAB
13 Assistant U.S. Attorney
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